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The Problems of Indian Federalism

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THE PROBLEMS OF INDIAN FEDERALISM

India, after over two decades of relatively stable government, is only now beginning to undergo the crucial tests of democratic political institutions that many other newly independent states have already failed. Since the general election in February 1967, the country has been passing through an unprecedented period of political instability. The emotional shockwaves and political imbalances generated by the Congress Party's waning power are causing some concern about the future of parliamentary democracy at both the state and national levels.

Probably the greatest area of concern, in terms of the ultimate viability of the Indian union, is the evolving relationship between the central government in New Delhi and the governments of the 17 constituent states. Until 1967, the numerous and thorny center-state problems were to a large degree dealt with through the mechanism of the Congress Party hierarchy. Now, however, with the rise of non-Congress state governments--a phenomenon that seems destined to continue--and a weakened Congress government in New Delhi, this important extraconstitutional channel for mitigating center-state conflicts has become useless in several important cases. For the first time, New Delhi and the non-Congress - governed states have been forced into reliance on the largely untested parts of the constitution affecting their mutual interests. In the process, considerable strain is being placed on the country's fragile federal system.

The Nature of Indian Federalism

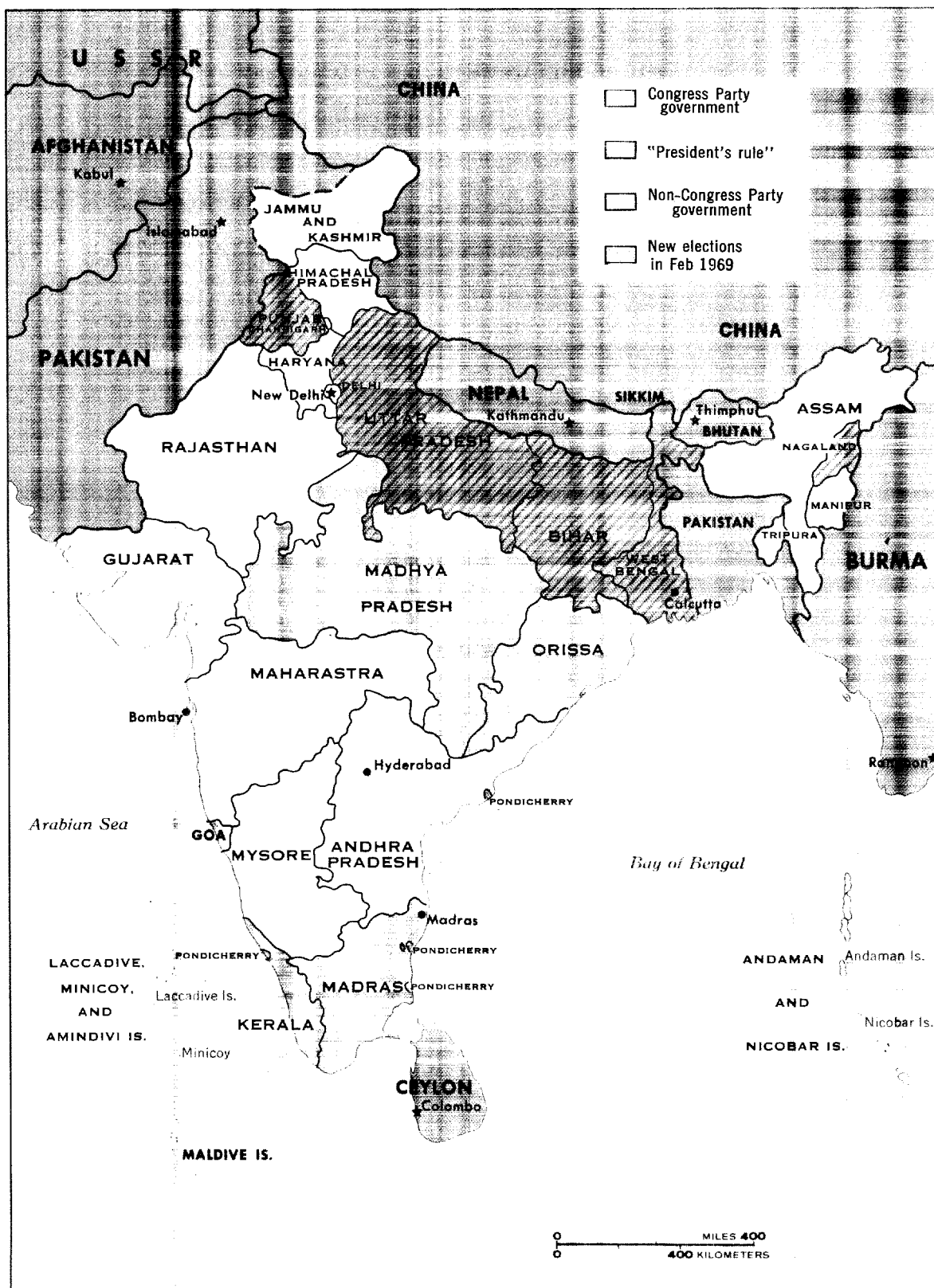
Since India's constitution came into effect in 1950, there has been considerable controversy over the basic nature--federal or unitary--of the governmental structure that it created. Until the rise of several non-Congress state govern-

ments in the wake of the historic fourth general election in February 1967, arguments over the federal and unitary aspects of the Indian union were relatively academic. The inevitable strains in state-center relations, generated in part by the diverse nature of the states and inherent conflicts between national

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The Political Situation in India



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and local interests, were ameliorated, if not always resolved, by political processes within the hierarchical power structure of the omnipresent Congress Party. Now, however, the first real test of the constitution's federal character has begun.

The Indian constitution reflects an extensive effort to provide an institutional framework for reconciling the common interests of the nation with the special interests of localities. Given the strong centrifugal forces within the country, this reconciliation precludes either broad independence or excessive dependence of the states within the union. As viewed by the framers of the constitution, the demands of the Indian situation require a fairly high degree of interdependence between the center and the states to facilitate political harmony and orderly economic progress.

Legislative Powers

The constitution spells out at great length the legislative relations and the division of legislative powers between the national and state governments. It embodies a careful and detailed balancing of powers obviously aimed at the reconciliation of diverse national and regional state interests. In practice, however, the system has been heavily weighted in favor of the national government--especially in times of emergency.

The national government is clearly in a predominant posi-

tion. Not only are residual powers--a very small area--conferred upon the union, but in cases of conflict union laws take precedence. More importantly, however, there are several methods by which the national parliament can and does invade the broad legislative jurisdiction of the states. Some of these have been extensively employed, others have been used in unforeseen ways or remain untested, and at least one has been condemned to the constitutional scrap heap by the recent evolution of political realities.

One of the best known means by which the national government can intervene in the states lies in the power of state governors, who are appointed by New Delhi, to withhold assent to state legislation by reserving a legally passed bill for further consideration by the federal president. The president, presumably acting on the advice of the national cabinet, in theory can cast a veto if the state legislature refuses to accept his proposed changes.

To date, the presidential veto power has not been used, although the provisions were employed as a tactic to hasten the downfall of a Communist government in Kerala in 1959. In the Kerala case--which could well be repeated in the future--a highly controversial bill reserved by the governor was eventually accepted by the president after modification by the Kerala State assembly. The time consumed by this lengthy process, however,

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enabled the non-Communist opposition to organize mass agitation that eventually justified New Delhi's dissolution of the state assembly and the constitutional take-over of the state government under special emergency provisions.

The upper house of the national parliament (Rajya Sabha)--which in theory represents the interests of the states--may also limit the power of the state assemblies. By a two-thirds majority of those present and voting, the Rajya Sabha can decide that it is "necessary and expedient" for parliament to legislate on any matter reserved for the states. Parliament's power is circumscribed, however, by a provision that when its mandate, which must be renewed annually, finally expires, all such laws passed in the interim also expire within six months.

In practice, the Rajya Sabha's powers have been vitiated by recent political events. The 1967 elections broke the Congress Party's virtual monopoly on the control of the state assemblies, which elect the Rajya Sabha representatives, and there is little chance that any party--including Congress--will be able to muster a two-thirds majority in the Rajya Sabha now or in the foreseeable future. Moreover, even during the high point of Congress Party power, the provisions were used only once and then only briefly during a food shortage. Even with the assured votes, the highly controversial nature of the provision makes the political

risk too great. More importantly, however, the constitution gives the central government emergency powers that require no preliminary action by either house of parliament to get the same job done.

New Delhi relies heavily on its emergency powers to limit and direct the legislative prerogatives of the states. Under emergency powers, the central government's invasion of state jurisdiction has at times been extensive, although generally this has been within democratically justifiable bounds. Even here, however, the political risks have gone up considerably as the Congress Party's parliamentary majority--which is necessary for the imposition of emergency provisions--has dwindled, and the party's freedom of action has been constricted by the growing strength of the opposition in some states.

The emergency power used most frequently since the 1967 elections is the so-called "President's Rule"--a constitutional device by which New Delhi can temporarily oust a state government. If, upon receipt of a "report from the governor or otherwise," the president is satisfied that a state government can no longer function in accordance with the constitution, he may assume all executive functions and declare that parliament will exercise all of the powers normally assigned to the state assembly. Thus, in practice, the party controlling parliament assumes control of the state apparatus as well. Significantly, however, "President's

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Rule" must be approved by a resolution of parliament and has a life of only six months, after which it can be extended by six-month increments for a maximum of three years.

In the 22 months since the elections, "President's Rule" has been imposed an unprecedented eight times as contrasted with only ten times during the previous 17 years. Currently, representative government is suspended in four heavily populated northern states and one union territory (West Bengal, Bihar, Uttar Pradesh, the Punjab, and the tiny union territory of Pondicherry), pending new elections. Nearly half of the 17 states have had serious problems maintaining stable majorities--the sine qua non to the successful functioning of the parliamentary system by which they are governed.

"President's Rule" is rapidly becoming a permanent fixture, despite some reluctance by New Delhi to resort to this drastic means. The political risks can be high, and the vociferous opposition parties are alert to real and imagined misuse of emergency powers. Across most of northern India, however, political life has degenerated to the point where parliamentary democracy has often been impossible. The breakdown of party discipline and the emergence of ad hoc groups as the basic political units, fragmentation and divisions among political parties, and the lure of office and prestige as a bait for defection are

among the many factors contributing to this situation.

Parliament is also empowered to enact laws concerning any subject normally reserved for the states when a condition of general national emergency is declared by the president. Like "President's Rule," the state of emergency must also be approved by parliament, although it may remain in force indefinitely.

A general state of emergency was proclaimed and approved following the Chinese Communist attack in 1962, and far-reaching legislation pre-empting the state sphere was enacted. Although the emergency was not withdrawn until January 1968, its effect on center-state relations was limited largely to the period during and immediately after the Chinese attack. Use of the state of emergency technique appears limited to periods of grave national danger, but when this happens, India is quickly transformed from a federal to a unitary state.

Administration

Under the conditions created by the 1967 elections, basic conflicts between New Delhi and the states--especially those with non-Congress governments--are likely to remain unresolved and to contribute to a heightening of tensions within the federal system. The non-Congress state administrations are built largely on anti-Congress sentiments and special regional interests, which

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make periodic collisions with central government policies inevitable. Already, there has been one major confrontation between New Delhi and a non-Congress - governed state over implementation of a national law as well as numerous lesser quarrels. New Delhi has demonstrated considerable flexibility, however, in coping with these problems.

The states, under the constitution, are required to comply with national laws and are forbidden to impede or prejudice the working of the federal executive. As a necessary corollary, New Delhi is empowered to issue instructions to ensure that its laws are enforced. This is especially important because many national laws are implemented by the state governments, and agencies of the national government are physically located in all of the states.

Prime Minister Indira Gandhi's government appears determined to make its writ run in the non-Congress - governed states, especially when vital interests are involved. New Delhi moved rapidly and decisively last September when the Communist-dominated government of Kerala State not only openly refused to obey instructions for implementation of a national ordinance banning a one-day token strike by federal government employees, but even encouraged opposition to the law. In an unprecedented move, Central Reserve Police, under the control of the Home Ministry in New Delhi, were deployed to Kerala without prior consultation with the state government.

The Kerala case may have partially resolved the long-lin-
gering question over what the central government can do to ensure that the states do not undermine its policies. New Delhi may not, however, always choose to use its paramilitary forces, which are being gradually strengthened, to ensure compliance with its laws and directives. Nor is it even clear how far it is willing to go with the Kerala precedent.

Political conditions both in the state involved and in New Delhi continue to dominate the hard decisions on center-state relations. Failure of a state to implement a national law could even lead to the imposition of "President's Rule" and the ouster of the state ministry. In Kerala, this extreme alternative may have been ruled out because the state government has long been using New Delhi as a whipping boy for its many problems and might have even welcomed "President's Rule" as a convenient way out without losing political face. It is also possible that if several states had simultaneously expressed strong reservations about the strike ban, New Delhi might have backed down.

Prime Minister Indira Gandhi's government has been fairly flexible in coping with recalcitrant non-Congress state governments and appears to be searching for new ways to mitigate center-state conflicts. The constitution provides considerable scope for setting up formal problem-solving machinery, but these provisions have never been fully utilized.

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Of particular interest is an untested article providing for the establishment of a special council of state governments. The president is empowered to establish a council--limited to a strictly advisory role--to facilitate coordination between the states and possibly, by extension, between the national government and the states. Prior to the 1967 elections, such a council would only have duplicated work more easily done within the organizational framework of the Congress Party, but now it could prove to be extremely useful.

Serious consideration has also been given to reviving a defunct system of five regional councils of states, used in the past mainly as a means of rounding off the rough edges of the difficult transition caused by the extensive geographical reorganization of the states in 1955. Such an arrangement would provide an institutional framework for regular communication between New Delhi and the states, and might improve the quality and frequency of the sometimes bitter center-state dialogue.

The internal Congress Party channel of communication has been severed where non-Congress state governments have come to power, but no other institutional channel has filled the gap. Periodic group and individual meetings of state ministers with their counterparts in New Delhi have only partially restored an institutional framework for the center-state dialogue. In the pre-1967 election days, such meetings were

just another Congress Party conclave, but now they are important occasions for Congress and non-Congress ministers to get together for group and private bilateral discussion. The expansion of these sessions to include the most important state and national government ministers--especially finance and agriculture--has helped to widen the scope of the dialogue, although they generally appear to produce more heat than light. Periodic meetings of state governors and presiding officers with the president and the speaker of the lower house of parliament (Lok Sabha) are also held, although they have provided few tangible results.

Financial Relations

New Delhi has always been the provider of financial resources to the states, and, to an ever-increasing degree, the states have become heavily dependent on the central government for both economic development funds and even normal operating expenses. New Delhi consequently often influences state policies through its increasing control of the purse strings. In the process, however, new strains are being put on the Indian federal structure, as state governments compete for scarce development funds and blame their inadequacies on the allegedly tight-fisted central government.

The advent of large-scale development planning through formal five-year plans has increasingly undermined the slim measure of financial self-reliance and policy independence

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intended for the states. The autonomous ad hoc finance commissions--intended to study and recommend to New Delhi the distribution of grants-in-aid and certain shared duties and taxes--have been gradually overshadowed by the large loans and grants given on the basis of recommendations from the powerful Planning Commission. Limited in practice, but not by the constitution, to dealing with non-plan resources, the finance commissions have been by-passed by the Planning Commission, which is directly under the control of the central government. The effect of New Delhi's tightening grip over the purse strings has been multiplied by the vastly increased spending levels of the states over the three five-year plans, both in absolute and relative terms.

As loans and grants from New Delhi have increased, the indebtedness of the states has grown to such an extent that they are finding it increasingly difficult to pay the interest on their debts, let alone the

principal. With New Delhi cast in the role of loan shark, a system has evolved in which some states repay their loans, and sometimes even interest charges, out of new borrowings. Such repayments rose from 9 percent of total state loans during the first five-year plan to 33 percent in the third-plan period, and are expected to run as high as 40 percent during the new five-year plan beginning next April. In this usurious atmosphere unhealthy attitudes in both the giver and the receivers have resulted.

Despite some current official interest in reforming the financial relations between New Delhi and the states, it appears unlikely that anything really constructive will be done in the near future. The resources available to the states for raising funds are comparatively few, and most state governments are reluctant to risk jeopardizing their political standing by improving their own revenue-raising measures; e.g., by more efficient tax collections. On the other hand, anxious to improve their

NEW DELHI'S FINANCING OF THE STATES
(In Billion US \$)

	1951-1956	1956-1961	1961-1966
States' PLAN Expenditures	2.997	4.374	8.522
<i>New Delhi's Share</i>	1.848 61.6%	2.222 50.8%	5.254 61.5%
Total States' Expenditures	7.054	12.386	22.750
<i>New Delhi's Share</i>	2.967 42.0%	6.023 49.0%	11.764 52.0%

NOTE: Excluding debt servicing; calculated at the pre-June 1966 rate of rupees 4.76 for 1 U.S. dollar.

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popular support, many state governments compulsively expand their development spending programs. Finally, some important sources for development financing, such as foreign aid, tend further to strengthen New Delhi's financial powers.

The President and the Governors:
Real or Imaginary Power?

Two major political actors--the federal president and the state governor--stand at the nexus of relations between New Delhi and each state and, as recent events have shown, they have the power to affect this relationship drastically. Their ultimate importance and freedom

of action, however, have long been the source of heated debate. Until recently, this was little more than an exercise in mental gymnastics for Indian lawyers but now, with fairly widespread political instability in the states, it has become a crucial current question.

Despite the key role of the president, the exact power relationship between the office and the national cabinet is vague. Although all of the presidents have in practice been approved by the prime ministers, nowhere does the constitution provide that the president must accept the aid and advice of the prime minister or



Prime Minister GANDHI



President HUSAIN

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the cabinet. In fact, the constitution makes it clear that there is no legally enforceable obligation on the president to accept ministerial advice. On the other hand, it was generally understood at the time that the constitution was adopted that the intent of the drafters was to incorporate the British convention binding the head of state to the directives of his ministers.

The experience of the last 19 years in building India's own constitutional practices supports the theory that, at least in normal times, the president is only a constitutional head of state and that real executive power lies with the national cabinet. In no case has the president failed to accept ministerial advice. There have been several instances of presidential restiveness, however, although few of these have been made public.

Precedence for presidential action is probably weakest in the specific area of center-state relations, because presidential action was seldom required during the first 17 years of the constitution's life. The increasing resort to "President's Rule" since the 1967 elections is building important precedence in this vital area, although some very crucial gaps still exist. It is always possible that a prime minister, motivated by partisan political considerations, could advise "President's Rule" when conditions in a state did not constitutionally warrant this drastic move. Similarly,

the president could be advised to grant or withhold assent to legislation that would impinge on the jurisdiction of the states or be asked to use his veto power over state legislation as a means of imposing New Delhi's will on a politically unpalatable state.

In such situations, it is conceivable that the president could conclude that it was his responsibility to ignore ministerial advice in order to protect the constitution and the integrity of the union. As the head of state, the president does not represent the government of the day; instead, having been elected by both parliament and the state assemblies, he represents the interests of both. These are basic current constitutional problems that could crop up at any time.

The state governors are becoming even more pivotal figures in center-state relations than the national president. Their crucial role as a bridge between New Delhi and the states, however, was long obscured by the political stability resulting from almost exclusive rule by Congress at both the national and state levels. For the most part, the governors were elderly Congress Party politicians put out to pasture in the state capitals as a reward for loyal service to the party, and they were little more than ceremonial figureheads.

The recent rapid rise and fall of state coalition governments has shown that the governors

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are much more than symbolic executives when political chaos sets in. Sworn to an oath to "preserve, protect, and defend the constitution," the governors have several important discretionary powers.

Topping their list of drastic means to restore political order is "President's Rule." Although a governor may be constitutionally by-passed, the eight impositions of "President's Rule" have all come only on the recommendation of the involved governors. At least once, a governor's advice has been rejected by New Delhi, but in all cases the governors appear to have been very influential.

Once representative government is suspended in a state, the experience of the last several months shows that the governor suddenly assumes real power. Although technically "President's Rule" derives constitutional authority from New Delhi, the governors have been virtually free to run the states. In tumultuous West Bengal, the governor himself appears to be making all the decisions that normally would be made by the chief minister and his cabinet, relying on civil servants only for technical advice and implementation. In Uttar Pradesh and the Punjab, cabinet-like formations of senior civil servants have been set up and given considerable power. In Bihar, where the civil service has long been riddled with corruption and caste factionalism, the governor is directly involved in daily decision-making and

relies on advisers independent of the state bureaucracy.

With the unstable political situation in many of the states, previously routine gubernatorial functions--such as the selection of a chief minister as a prelude to the formation of a cabinet, dismissal of ministers, and summoning, proroguing, and dissolving state assemblies--have increasingly become crucial acts directly affecting the life of state governments and the fortunes of contending political factions. Precedents for resolving controversial issues arising out of such situations are lacking and are only now beginning to evolve.

In Rajasthan, where the Congress Party barely failed to capture a majority in the 1967 elections, the governor--a former Congress chief minister from the neighboring state of Uttar Pradesh--called on the leader of the Congress legislative group to form a government. Before Congress strength could be tested in the assembly, however, violent opposition-led demonstrations broke out in the state capital and elsewhere. The governor's partisan attitude--perhaps encouraged by New Delhi--was not dented by this nor even by the chief minister-designate's subsequent declining of the invitation to form a government. Rather than then offering the non-Congress coalition a chance to form a government--the usual practice under a parliamentary system--the governor recommended

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and obtained "President's Rule." Direct rule lasted only 44 days--long enough for Congress to augment its strength through defections from the opposition in the assembly and to assume undisputed power. The governor's conduct, though formally within the bounds of the constitution, raised the specter of discrimination against the non-Congress parties.

The governors are powerless to summon state assemblies on their own, but, as the events in West Bengal in late 1967 revealed, a chief minister cannot indefinitely disregard a governor's recommendation, especially if it is intended to test a state government's legislative support. In West Bengal, the chief minister of a Communist-dominated coalition, recognizing that he lacked a majority in the state assembly, refused to heed the governor's repeated advice to hold an early assembly meeting in hopes that with more time he could shore up his rapidly eroding support. The governor, after two abortive attempts to convene the assembly on his own, finally dismissed the minister and recommended and obtained "President's Rule" from New Delhi. The legal key to his decision was the constitutional provision that a state minister is appointed to serve at the governor's "pleasure"--a very special word, now only beginning to be defined in Indian constitutional terms.

The principle that a governor need not heed the advice of a chief minister if the minister's object is to avoid a test of

strength in the assembly was reinforced by the outcome of a political crisis that gripped Madhya Pradesh in the summer of 1967, an event that also confirmed the governor's independent power to dissolve a state legislature. When the Congress government lost its majority by defections to the opposition, the chief minister immediately advised the governor to dissolve the assembly--a move intended to force new elections through which the minister hoped to restore his support. After ten days, the governor--reflecting a decision by the Congress Party high command--rejected the chief minister's advice. The grounds were that the minister's advice was not binding without majority support, and that this condition existed even though the assembly, which was not in session, had never taken a vote of no-confidence. Subsequently, on the governor's invitation, the opposition formed a shaky coalition government that is still barely holding on to power.

An even more unusual situation developed in the Punjab in March 1968 and thrust the state's governor into an unprecedented political decision-making role. The Congress-supported Punjab government was put in serious jeopardy when the opposition-supported assembly speaker abruptly adjourned the house for two months after a row with Congress legislators. The adjournment stymied action on a just-introduced budget containing essential revenue-raising measures.

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Faced with this constitutional imbroglio, the governor, acting on the advice of the state chief minister and with careful coaching from Congress leaders in New Delhi, moved decisively. First, the assembly was officially prorogued; then an ordinance limiting the power of the speaker to block debate on the budget was issued; and finally, the assembly was summoned to meet and act on the budget. The opposition later was able to get the governor's and the assembly's actions invalidated by the state high court, only to have the decision reversed by the Supreme Court.

This Supreme Court decision was a landmark in Indian federalism, with far-reaching implications. The court made it very clear that it accepted mala fides (bad faith) as a ground on which gubernatorial power can be legitimately impugned, although the actions of the Punjab governor were approved. This doctrine can be used to justify significant expansion of gubernatorial power under unusual conditions, as it was in the Punjab, but it can also be employed to limit abuse of gubernatorial authority such as may have occurred immediately after the elections in Rajasthan.

The Supreme Court decision on the Punjab case appears to have almost inadvertently begun the process of hedging against gubernatorial power with constitutional interpretation. The Madhya Pradesh crisis would further suggest that the Congress Party, contrary to its early post-election practice in Rajas-

than, is now prepared to refrain from using the pliable governors as tools for partisan political interests. The prime minister, who advises the president on the choice of new governors, has also begun to select fewer Congress politicians, drawing more on retired civil servants and, to a lesser extent, on retired military officers. The states, however, are still only consulted on gubernatorial selections, and, as a recent heated debate over the new governor of Bihar revealed, this does not include the right of refusal.

Conclusions

The problems of Indian federalism are manifold and changing. India's sheltered political institutions finally are beginning to undergo the critical testing so long put off as a result of the smothering dominance of the Congress Party. In the process, new procedures, veering away from British legacies and more reflective of India's own political life, are gradually emerging. To a considerable extent, the Indian democratic experiment is moving into dangerously uncharted waters, with only primitive navigational aids and no clear view of its ultimate destination.

The fluid and sometimes chaotic political events of the 22 months since the general election of 1967 offer few reliable guides to the ultimate viability of Indian federalism. The period of trial for Indian parliamentary democracy is likely to be prolonged and, at least in the foreseeable future,

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disruptive. The era of charismatic leadership ended with the death of Nehru in 1964, and recent developments in the states point toward continuing instability at that level of Indian political life. The turbulence of economic and social change only further complicates the picture. Thus far there has been little spillover from the states to the national level, but should the

Congress Party lose its majority in the national parliament--national elections must be held by 1972--the entire federal structure could be in jeopardy. The major political parties, including the Congress Party, continue to see partisan advantage in parliamentary democracy, however, and show little inclination to jettison the system during its times of trial.

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